

CIVIL REVISION APPLICATION No 1605 of 1979

Hon'ble MR.JUSTICE J.R.VORA

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Versus

BAI NASIMAKHANAM D/O AKHAMADJIBHAI UMARBHAI

MR BR PARIKH for Petitioners

MR PV NANAVATI for Respondent No. 1

Date of decision: 28/06/1999

1. Applicant - Bai Sakinaben Ismailbhai Multani

(since deceased through legal heirs and representatives) was the defendant in HRP Suit No. 25 of 1976 in the court of Civil Judge (JD), Prantij. The suit was filed by present respondent being landlord and Bai Sakinaben being tenant. Mainly, the suit was filed on the ground of arrears. The suit was decreed by judgment and decree of the Trial Court dated 14th April, 1978. Sakinaben

filed First Appeal before the District Court Sabarkantha at Himatnagar being Civil Appeal No. 17 of 1978. The Appeal was after hearing, dismissed by the First Appellate Court, confirming the decree passed by the Trial Court. Being aggrieved by, this Revision Application is filed by Bai Sakinaben (now deceased) through her legal heirs against the above mentioned judgment of the First Appellate Court.

2. Learned Advocate Mr. B.R. Parikh on behalf of the applicants and learned Advocate Mr. P.V. Nanavati on behalf of the respondent were heard.

3. Mr. Parikh sought to make out a point that Bai Sakinaben and her husband, both were tenants because Exhibit 46, so called rent note, was signed by both of them and hence the statutory Notice under Section 12(2) was bad and illegal. Going through the record, it is clear that the contention of the defendant i.e. present applicant in that suit was that she was not the tenant of the suit premises but her husband was the tenant of the suit premises. Both the courts below came to the finding that the present applicant Bai Sakinaben was the tenant of the suit premises. Now, this being the finding of fact, cannot be assailed in this Revision Application. Mr. Parkih also sought to make out a point that Notice under Section 12(2) was not legal and valid because it

was not according to English Calendar month. Referring to the decision of the Lower Appellate Court, it appears that while placing reliance on the decision of this Court in MISTRY BHIKHALAL BHOVAN vs. SUNNI VORA NOORMAMAD ABDUL KARIM AND OTHERS, reported in 19 GLR 248 that "month" occurring in Section 12(2) of the Bombay Rent Control Act clearly points to only one conclusion, namely, that the month referred to there is a span of time between two dates of two contiguous months and not a calendar month. In this matter, month of tenancy is

Gujarati month of tenancy, but, referring to the Notice, it is clear that clear span of one month time has been granted to the present applicant - tenant by the landlord for vacating the premises. It is also urged that rent of Rs.456/- being arrears are demanded in the Notice and in the suit the demand of rent is Rs.455/-. With reference to the arrears and the demand in the Notice not being clear, Notice is illegal. Both the contentions raised by Mr. Parikh cannot be upheld for the simple reason that referring to Notice, this span of time which is granted is clearly beyond one month for vacating the premises and that the demand of the arrears made by the landlord is very clear and the difference is simply a matter of account here and there. Except this, no such legal point has been raised in this Revision Application which can be considered. Having gone through the record of the case and judgments of both the courts below, I am satisfied that the decree passed is in accordance with the law and there is no error of law committed by any of the lower courts.

4. In this view of the matter, this Revision Application fails and the same is rejected. Rule is discharged. The ad interim stay granted earlier stands vacated. No order as to costs. However, the present opponent - landlord original plaintiff is directed not to execute the decree of eviction passed till 31st August, 1999 as learned counsel Mr. B.R. Parikh for the applicant states that the applicant intends to approach the higher forum.

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